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Intel Corporation
4500 S. Dobson Road, MS: OC2-157
Chandler, AZ 85248

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Page 1 of 17

Urgent

Confidential

Date: February 17, 2005

To:	**Fax:**	**Art Unit:**
Examiner: Joshua D. Schneider	(703) 872-9306	2182
USPTO		

From:	**Fax:**	**M/S:**
Stuart A. Whittington	480-715-7738	
Intel Corporation		

Subject: Application No.: 09/649,268   Docket #: 42390.P9219
Filed: August 28, 2000   Inventor: Michael S. Chartier

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Lisa M. Hopkinson   Date: February 17, 2005 *Lisa M Hopkinson*

Included in this transmission:
Fax Cover Sheet (1 page)
Transmittal Form (1 page)
Fee Transmittal For FY 2005 (1 page submitted in duplicate)
Appeal Brief (13 pages including Appendix A)

TRANSMITTAL FORM

(to be used for all correspondence after Initial filing)

Application Number	09/646,268
Filing Date	August 28, 2000
First Named Inventor	Michael S. Chartier
Art Unit	2182
Examiner Name	SCHNEIDER, Joshua D.
Attorney Docket Number	42390P9219

Total Number of Pages In This Submission 17

ENCLOSURES *(Check all that apply)*

- [✓] Fee Transmittal Form
  - [✓] Fee Attached
- [ ] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53

- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
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- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [✓] Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
- [ ] Proprietary Information
- [ ] Status Letter
- [✓] Other Enclosure(s) (please identify below):
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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	INTEL CORPORATION
Signature	*[signature]*
Printed name	Lanny L. Parker
Date	February 17, 2005	Reg. No.	44,281

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FEE TRANSMITTAL
for FY 2005
Effective 10/01/2004. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT | **($) 500.00**

Complete If Known	
Application Number	09/649,268
Filing Date	8/28/2000
First Named Inventor	Michael S. Chartier
Examiner Name	SCHNEIDER, Joshua D.
Art Unit	2182
Attorney Docket No.	42390P9219

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

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Deposit Account Number: **50-0221**

Deposit Account Name: **INTEL CORPORATION**

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee ($)	Fee Code	Fee ($)		
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) ($)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims		Fee from below	Fee Paid
Total Claims		-20** =	X	=
Independent Claims		- 3** =	X	=
Multiple Dependent				=

Large Entity		Small Entity		Fee Description
Fee Code	Fee ($)	Fee Code	Fee ($)	
1202	18	2202	9	Claims in excess of 20
1201	88	2201	44	Independent claims in excess of 3
1203	300	2203	150	Multiple dependent claim, if not paid
1204	88	2204	44	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) ($)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee ($)	Fee Code	Fee ($)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	430	2252	215	Extension for reply within second month	
1253	980	2253	490	Extension for reply within third month	
1254	1,530	2254	765	Extension for reply within fourth month	
1255	2,080	2255	1,040	Extension for reply within fifth month	
1401	340	2401	170	Notice of Appeal	
1402	340	2402	170	Filing a brief in support of an appeal	500.00
1403	300	2403	150	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,370	2453	685	Petition to revive - unintentional	
1501	1,370	2501	685	Utility issue fee (or reissue)	
1502	490	2502	245	Design issue fee	
1503	660	2503	330	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) _____
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SUBMITTED BY
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Name (Print/Type)	Lanny L. Parker	Registration No. (Attorney/Agent)	44,281	Telephone	480-715-5388
Signature				Date	February 17, 2005

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Michael S. Chartier	Atty. Docket No: 042390.P9219
Appln. No.: 09/649,268	Group Art Unit: 2182
Filed: August 28, 2000	Examiner: Schneider, Joshua D.

Title: MOBILE COMPUTING SYSTEM HAVING A MODEM FOR OPERATION
INDEPENDENT OF A MAIN PROCESSOR AND METHOD THEREFOR

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BRIEF ON APPEAL

In response to the Advisory Action dated November 12, 2004 and pursuant to Appellant's

Notice of Appeal filed on December 17, 2004, Appellant presents this Brief and fee under 37 C.F.R.

§ 1.17(c) in appeal of the Final Rejection dated August 27, 2004.

I. REAL PARTY IN INTEREST.

Intel Corporation is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES.

There are no related appeals or interferences before the Board of Patent Appeals and

Interferences known to Appellant, the Appellant's legal representatives, or assignee that will

directly affect or be directly affected by or have a bearing on the Board's decision in the pending

appeal.

III. STATUS OF CLAIMS.

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A total of twenty claims have been pending in the application and their status is as

follows:

Claims 1-20 stand finally rejected and are the claims subject to this appeal. Appendix A

includes a copy of the claims subject to this Appeal.

IV. STATUS OF AMENDMENTS.

No amendments have been presented subsequent to the final rejection, although a response

requesting reconsideration and withdrawal of the final rejection was filed on October 26, 2004.

V. SUMMARY OF CLAIMED SUBJECT MATTER.

Embodiments of the instant invention relate to portable battery operated computing

devices. Components of a computing device such as displays, processors, and hard disks are

responsible for a large portion of the power consumed by such a device. Many computing

devices have thus been designed to have a stand-by or idle mode that attempts to reduce the

amount of power consumed when the device is not actively being used. However, these low-

power modes attempt to deactivate many, if not all, of the components in the portable computing

devices and thus, for example, may prohibit any communications with other components within

the device and/or a network when the device processor is disabled or inactive. (Specification pg.

2, ll 9-22).

Referring to Appellant's independent claims 1, 8 and 18 and Fig. 1, by way of example, a

portable computing device (e.g., 10; Fig. 1) is claimed which includes a modem (70), a main

processor (50) and a non-volatile memory. (Spec. pg. 5, ll. 15 – pg. 7, ll. 7).

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APPELLANT'S BRIEF
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Modem 70 may be used to receive or transmit data while main processor 50 is deactivated. Further, modem 70 may be programmed to download or transmit information when main processor 50 is in an idle mode or turned off altogether. For example, modem 70 may download data, such as email, stock data, news articles, etc. while main processor 50 is inactive or powered off. (Spec. pg. 6, ll. 6-13). The non-volatile memory 75 is coupled to the modem and the main processor and adapted to store at least a portion of a communication received by the modem while the processor is inactive.

Referring to claim 4, the portable communication device 10 may further include a modem processor 71 adapted to operate independently of the main processor 50 and to store the received communication in the non-volatile memory 75 when the main processor 50 is powered off. (Spec. pg. 6 , ll. 5-10).

Referring to claim 5, the modem is adapted to transmit a message when the processor is inactive. (Spec. pg. 8, ll. 13-14). Subsequently, the user may activate main processor 50 and utilize data, e.g., read emails or process data, which was downloaded when main processor 50 was inactive. (Spec. pg. 9, ll. 1-4). Additional variants are disclosed and represented in other claims.

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.

The only issue for consideration on this appeal is:

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A.   Whether the Examiner erred in rejecting claims 1-20 under 35 U.S.C. § 103(a) as

being unpatentable over U.S. Patent No. 5,748,084 to to Isikoff (hereinafter "Isikoff")

VII.   ARGUMENT.

A.   Claims 1-20 Are Patentable Over Isikoff.

Claims 1-20 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over

Isikoff. Appellant respectfully requests that these rejections be overturned for the following

reasons.

It is well established that *prima facie* obviousness is only established when three basic

criteria are met. First, there must be some suggestion or motivation, either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art, to modify

the reference or combine reference teachings. Second, there must be a reasonable expectation of

success. Finally, the prior art reference (or references when combined) must teach or suggest all

the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991) (MPEP 2144).

Obviousness can only be established by combining or modifying the teachings of the

prior art to produce the claimed invention where there is some teaching, suggestion, or

motivation to do so found either explicitly or implicitly in the references themselves or in the

knowledge generally available to one of ordinary sill in the art. *In re Kotzab*, 217 F.3d 1365,

1370 (Fed. Cir. 2000). The mere fact that references can be combined or modified does not

render the resultant combination obvious unless the prior art also suggests the desirability of the

combination. *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990). "When the references cited by the

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examiner fail to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned." *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988).

Isikoff discloses a security system for locating, communicating with, and managing laptop computers and other portable electronic devices that include a microprocessor and memory. (Col. 1, ll. 3-7). Referring to Isikoff Fig. 4, a host computer 100 may include a beacon 101 and a processor (undesignated). An example implementation of beacon 101 is shown in Fig. 3 which includes a data modem 20 and its own microprocessor 30. Beacon 101 is installed in a host computer 100 such that the data on host computer 100 may be protected from unauthorized access. (Col. 2, ll. 51-67).

For example, "[i]f the computer [100] is stolen the beacon [101] is advantageously activated to secure its data. This is done in one or more of several ways; it operates to recover or destroy important data, or to disable the computer." (Col. 3, ll. 46-50; emphasis added). Isikoff discloses that the beacon 101 is built-in to computer 100 and has access to various system resources such as hard drive 102 and battery 104. (Col. 4, ll. 14-16). The battery power for the laptop may be routed through the beacon, which may control a switch to cut power to the computer 100 or various subsections thereof. (Col. 4, ll. 16-19).

Isikoff does not however, disclose deactivating a main processor to reduce power consumption of the portable device and/or utilizing a modem processor for temporary storage of data in a non-volatile memory for future use when the processor is inactive as contemplated by the various embodiments of Applicant's claimed invention represented for example by

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independent claims 1, 8 and 18. The processor in the pending claims is periodically inactivated to reduce power consumption as opposed to Iskioff, which at most teaches the processor could be deactivated by beacon 101 itself (col. 4, ll. 15-19), and ONLY if the computer is determined to be stolen (col. 2, ll. 14-16).

The Final Office Action of August 27, 2004 readily admits that Isikoff (the only cited prior art reference in the instant rejection) fails to teach or suggest the power conservation limitations recited in Appellant's pending claims (8/27/04 Final Office Action, pg. 3, ll. 3-5). Notwithstanding, the Office Action alleges it would have been obvious to adapt Isikoff so that it "may operate to receive and store communication data while the main host processor is deactivated in order to conserve power in a portable computing system."

Other than relying on improper hindsight of the instant specification, Appellant is uncertain how such a conclusion can possibly be reached based on the teachings of Isikoff. The Office Action mentions the Advanced Configuration and Power Interface (ACPI) specification to demonstrate what is "well known in the art" in regard to power suspend states yet, fails to cite this reference in combination with Isikoff to reject the pending claims.

In essence, Appellant's claimed invention allows a portable device such as a laptop computer to continue to receive data for use by the main processor, for example emails, even when the main processor is in a low power mode. In contrast, Isikoff discloses a beacon device that is able to disable or protect data of a portable computing device when a security violation is detected.

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In the Advisory Action of November 12, 2004, the Examiner states, that the "assertion that Isikoff fails to teach or suggest all the limitations is correct but has no bearing on the rejection.....[since] references cannot be attacked individually when they are being used to establish obviousness. (*Id.* at pg. 2, ll. 1-3). To this Appellant responds that: (i) there is only one prior art reference relied upon in the instant rejection; and (ii) statements that it would have been well within the ordinary skill in the art to modify Isikoff to meet the limitations present in Appellant's claims is not sufficient to establish prima facie obviousness without providing some objective reason to do so. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

It is respectfully submitted that a *prima facie* case of obviousness has never been established since: (i) there is no suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference as as claimed by the Appellant; and (ii) even when modifying the cited reference as suggested in the Office Action, the prior art still fails to teach or suggest each and every claim limitation in Appellant's claims. Without both of these elements, a *prima facie* case of obviousness is not established and a rejection under 35 U.S.C. § 103(a) is improper (MPEP 2143).

(i)   THERE IS NO MOTIVATION TO MODIFY THE ISIKOFF REFERENCE

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Although a prior art device "may be

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capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." *Id.* at 682.

In the instant case it is alleged that it is "well known in the art" that, for example, hibernate abilities are commonly implemented portable computing devices. However, Appellant respectfully submits that there is no motivation or suggestion from Isikoff or the alleged well-known art, that modem communications, such as email and data transfers would still be performed while a main processor is in hibernate state or low power mode. Accordingly, Applicant submits that there is no proper motivation to modify Isikoff to meet the limitations of Appellant's claims as alleged in the Office Action.

Since there is no proper motivation for modifying the Isikoff portable device to performing modem data transfers while the main processor is inactive due to low power mode, the rejection of claims 1-20 under 35 U.S.C. § 103(a) based on Isikoff is improper.

(ii) THE RESULTING MODIFICATION STILL FAILS TO TEACH OR SUGGEST ALL THE CLAIMED LIMITATIONS

Even assuming that it would be proper to modify the Isikoff as suggested by the Office Action (*arguendo*), the resultant device would still fail to perform a method including, for example:

-*storing data with a second processor for future use while the first processor is deactivated to conserve power consumption of the portable computing device* as claimed in Appellant's claim 8;

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- *activating the first processor and accessing the data* [which was previously stored by the second processor while the first processor was inactive] *with the first processor* as claimed in Appellant's claim 12; or

-*programming a modem by a user to receive data with the modem while a main processor of the portable computing device is disabled for a low power mode* as recited in Appellant's claim 18.
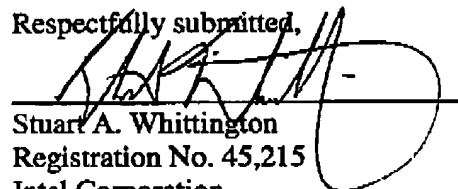
Additionally, it is respectfully submitted that Isikoff, even in view of the power saving modes disclosed by ACPI, fails to teach or suggest a non-volatile memory adapted to store at least a portion of the received communication for future use by a user, while the processor is inactive as recited in Appellant's claim 1.

Because the suggested modifications of Isikoff is improper and because each and every one of Appellant's claim limitations are not disclosed or suggested even when modifying Isikoff as suggested in the Office Action, Appellant respectfully submits a *prima facie* case of obviousness under 35 U.S.C. § 103(a) has not been established and withdrawal of the §103 rejection of record is respectfully requested.

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It is respectfully submitted that in view of the foregoing all of the pending claims are

patentable over the cited prior art references, alone or in any combination, and the Board is

respectfully requested to overturn the rejections of record and allow this application to issue.

Respectfully submitted,

Stuart A. Whittington
Registration No. 45,215
Intel Corporation

(480) 715-3895

c/o
Blakely, Sokoloff, Taylor & Zafman, LLP
12400 Wilshire Blvd., Seventh Floor
Los Angeles, CA. 90025-1026
(503) 264-0967

Date: February 17, 2004

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APPENDIX A
(Claims on Appeal)

1. (Previously presented) A portable computing system comprising:

a modem adapted to receive a communication;

a processor coupled to the modem and adapted to be periodically inactivated to reduce power consumption of the portable computing system; and

a non-volatile memory device coupled to the modem and the processor, wherein the modem is adapted to store at least a portion of the communication in the non-volatile memory for future use by a user, wherein the at least a portion of the communication is stored while the processor is inactive.

2. (Original) The portable computing system of claim 1, further comprising a hard drive coupled to the processor.

3. (Original) The portable computing system of claim 1, further comprising a modem processor, wherein the modem processor is adapted to operate independently of the processor.

4. (Original) The portable computing system of claim 3, wherein the modem processor is adapted to store at least a portion of the communication in the non-volatile memory when the processor is powered off.

5. (Previously presented) The portable computing system of claim 1, wherein the modem is adapted to transmit a message when the processor is inactive.

6. (Original) The portable computing system of claim 5, wherein the non-volatile memory is adapted to store the transmitted message.

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APPENDIX A
(Claims on Appeal)

7. (Original) The portable computing system of claim 1, wherein the non-volatile memory is adapted to store user profile information indicative of what communications are to be stored in the non-volatile memory.

8. (Previously presented) A method of retrieving data with a portable computing device having a modem, a first processor, and a second processor, the method comprising:

deactivating the first processor of the portable computing device to conserve power consumption of the portable computing device;

activating the second processor so that the modem receives the data; and

storing the data with the second processor for future use while the first processor is deactivated.

9. (Original) The method of claim 8, wherein deactivating the first processor includes disabling a power supply so that the first processor consumes substantially no power.

10. (Original) The method of claim 8, wherein storing the data includes storing the data in a non-volatile memory.

11. (Original) The method of claim 10, wherein storing the data includes transferring the data from the modem to a flash memory array with the second processor.

12. (Original) The method of claim 8, further comprising:

activating the first processor; and

accessing the data with the first processor.

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APPENDIX A
(Claims on Appeal)

13. (Original) The method of claim 8, further comprising initializing the second processor to identify the data to be stored.

14. (Original) The method of claim 13, wherein initializing the second processor includes storing user profile data.

15. (Original) The method of claim 8, further comprising initializing the modem with the first processor to identify the data to be stored.

16. (Original) The method of claim 15, wherein initializing the modem includes storing user profile data in a non-volatile memory device with the first processor.

17. (Original) The method of claim 8, wherein activating the second processor includes enabling the modem to receive a wireless communication comprising at least a portion of the data to be stored.

18. (Previously presented) A method of storing data in a portable computing device comprising:

    programming a modem by a user to receive data with the modem while a main processor of the portable computing device is disabled for a low power mode.

19. (Original) The method of claim 18, further comprising storing the data in a non-volatile memory device.

20. (Original) The method of claim 18, wherein receiving data with the modem includes receiving a wireless communication.

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